

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2016

Public Authority: The Department of Finance
Address: Clare House
303 Airport Road
Belfast
BT3 9ED

Decision (including any steps ordered)

1. The complainant has requested information relating to the Northern Ireland Civil Service-wide Voluntary Exit Scheme. The Department of Finance (DoF) applied section 14(1) of the FOIA to the complainant's request.
2. The Commissioner's decision is that the DoF has correctly applied section 14(1) of the FOIA to the complainant's request. The Commissioner therefore requires no steps to be taken.

Background

4. The Voluntary Exit Scheme (VES) is a Northern Ireland Civil Service (NICS) wide scheme whereby members of NICS staff can apply to voluntarily exit their posts. The purpose of the Scheme is to effect a permanent paybill reduction in the Northern Ireland Civil Service. The Scheme carries certain selection criteria and is operated by the DoF's Corporate HR.
5. On the 19th August 2015, the complainant submitted his first request to the VES Project Manager seeking clarification on how selection was carried out. As this information was available in the scheme information booklet, which was on the then Department of Finance and Personnel (known as the Department of Finance from 9 May 2016) website, this query was handled as Line of Business (LOB). Following the Project Manager's response, the complainant sent another email

seeking further clarification on the contents of that response and requested information on another applicant to use as a comparator. Still treating the request as LOB, the Project Manager refused to answer this query believing that this information could have resulted in the release of personal information relating to his named comparator.

6. The complainant responded that the reply was inappropriate, and requested that it be treated under the FOIA. This pattern was repeated in subsequent exchanges of communications i.e. the complainant would put in a request and where possible Corporate HR would answer the query as an LOB. If the Department was unable to provide the information, the complainant was advised of this and the rationale for that decision. The complainant at this point would ask for the request to be dealt with under either FOIA or the Data Protection Act 1998 (DPA).

Request and response

7. On 23 October 2015, the complainant wrote to the DoF (then the Department of Finance and Personnel) and requested information in the following terms:

"The application analysis lists 14 'departments' and provides a headcount of applicants for each. Can you provide information, please, about:-

- the number of these departments that did, and the number that did not, specify at least one 'general service' Grade 7 post in their 'exits required' profile as used to "inform the costings and selection process";
- (Where departments did so specify) the number of those departments that refined their profiles by discipline within the Grade 7 and Analogous Grades grade and the numbers that kept their profiles at Grade level for that grade

(where they did not so specify) the number of those departments which had general service Grade 7s who were eligible for selection). I note from your reply that HSENI submitted its profile in the first instance to DETI. I now seek information about whether or not CHR engaged in any discussion or correspondence with HSENI and/or DETI as to the treatment of HSENI as an individual 'department' for the

purposes of VES and, if so, I request any minutes or notes of meetings, records of conversations or correspondence on the subject."

8. The DoF responded on 27 November 2015. It stated that it was applying section 14(1) of the FOIA to the complainant's request.
9. Following an internal review the DoF wrote to the complainant on 12 January 2016. It stated that the reviewer was upholding the original decision.

Scope of the case

10. The complainant contacted the Commissioner on 24 October 2016 to complain about the way his request for information had been handled.
11. The Commissioner has considered the DoF's application of section 14(1) to the complainant's request.

Reasons for decision

12. Section 14(1) states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.
13. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.¹ The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

¹ GIA/3037/2011

15. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"

16. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
17. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests.² The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

The DoF's position

Does the request impose a significant burden on the DoF in terms of both expense and distraction?

18. The Commissioner is aware that a present or future burden on the public authority caused by a request may be inextricably linked with the previous course of dealings between the public authority and the requestor. Therefore, in this case, the context and history of the complainant's most recent request, in terms of the previous course of dealings between him and the DoF, must be considered when assessing whether the request can be characterised as vexatious. In particular, in the Commissioner's view, the number, breadth, pattern and duration of previous requests may be a telling factor.
19. As regards the pattern, the Commissioner considers that a requestor who consistently submits multiple requests under the FOIA, or associated correspondence within days of each other or repeatedly

²http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

bombards the public authority with e-mail traffic is more likely to be found to have made a vexatious request.

20. The DoF has informed the Commissioner that, over a 3 month period, the complainant submitted in total seven requests for information, four of which were treated as Line of Business (LOB), two as requests under the FOIA, and one as an informal internal review which was considered under the DPA as a subject access request (SAR). This resulted in multiple emails being issued from Corporate HR in response to the complainant's queries and multiple responses to those e-mails. The DoF states that Corporate HR identified a pattern of what they considered to be "fishing" for information, as after receiving comprehensive responses to his queries, the complainant responded with additional questions in relation to the information with which he had just been provided, often focusing on minute detail rather than the wider application of the selection rules themselves.
21. The DoF considers that, although the complainant may not have explicitly intended to cause inconvenience or expense, he imposed a substantial burden on the resources of Corporate HR by the number of emails he submitted in such a short period of time and the substantial amount of staff time required in drafting comprehensive responses to him. The DoF has informed the Commissioner that the complainant's multiple queries imposed a significant burden upon a division with a small staff team who were already heavily involved in administering the Voluntary Exit Scheme, a scheme which is NICS wide.
22. The DoF informed the Commissioner that it does not track costs incurred for FOI requests. However, the Commissioner asked if the DoF could provide an estimate of costs in relation to the complainant's requests. The DoF has estimated that, given the number of approaches and people involved at different levels an estimate of in excess of 20 hours at £25 per hour would be reasonable. This includes time spent in considering the complainant's requests, drafting responses, face to face meetings with his employer, including the Chief Executive of his department, and seeking legal advice in relation to his requests.

Does the request have any serious purpose or value?

23. The DoF has informed the Commissioner that the complainant's original request was for clarity in the relation to the application of the rules of

the Voluntary Exit Scheme. Through a comprehensive response, the complainant was provided with this clarity. Furthermore, Corporate HR was aware that a meeting was held between the complainant and the Chief Executive of the complainant's relevant NICS department when the management of the Scheme, in relation to that department's position, was explained to him. However, the complainant continued to raise further queries which focused on replies instead of the application of the scheme rules.

Is the request designed to cause disruption and annoyance?

24. The DoF has stated that the complainant sent simultaneous emails to different people within both Corporate HR and his own relevant department, seemingly designed for the purpose of 'fishing' for information with little idea of what might be disclosed. For example the complainant sent the same request for information to both Corporate HR and the relevant department on 8th October 2015
25. Whilst the DoF accepts that the complainant may not have explicitly intended to cause disruption or annoyance, they consider that he has done so nevertheless by virtue of the number of emails he submitted in such a short period of time and the substantial amount of staff time required in drafting comprehensive responses to him.

It can otherwise fairly be characterised as obsessive or manifestly unreasonable

26. Despite receiving comprehensive responses to his requests for information, the complainant continued to write to the DoF, submitting numerous follow up questions, many of which focused on specific words or phrases in the DoF's responses, often digressing from the theme of the original request. The DoF has provided the Commissioner with examples of this, which include submitting queries arising out of earlier responses and, most notably, when advised by the DoF that, due to its limited resources, he would be best to direct the request to his own department, with Corporate HR having input where appropriate, he refused and still insisted upon submitting it as a request under the FOIA to the DoF.

The Commissioner's view

27. The Commissioner is aware that, as per her guidance, there are many different reasons why a request may be considered vexatious. Whilst there are no specific or prescriptive rules as to what makes a request

- vexatious, there are generally typical characteristics and circumstances which make it easier to determine whether or not a particular request is vexatious. A request does not necessarily have to be about the same issue as previous requests in order to make it vexatious, however the request may be connected to others by a broad or narrow theme. A common feature of such requests is that they can emanate from a perceived wrongdoing on the part of a public authority.
28. The Commissioner's approach is to assess whether the level of disruption, irritation or distress caused to the authority by the request is disproportionate or unjustified, when weighed against the purpose and value of the request. When making the assessment, she has also taken into account the context and history of the request, i.e. the wider circumstances surrounding the request.
 29. The Commissioner notes that the DoF's Corporate HR is a small team whose resources are already heavily burdened by the administration of the VES. She recognises that the DoF has been responsive to the complainant's requests and has made every effort to assist with these, including organising a meeting with relevant staff from the complainant's own department.
 30. The Commissioner also considers that, given that responses provided by the DoF to the complainant's requests serve to generate further queries, it is reasonable to conclude that the complainant will continue to submit requests, and/or maintain contact regarding the VES. The Commissioner is therefore satisfied that, in the context of the DoF's previous and ongoing dealings with the complainant, it is likely that compliance with these requests would generate additional requests. This would, in turn, result in a disproportionate burden on its resources. The Commissioner is particularly persuaded of this by the fact that the complainant has been advised to address his queries to his own department, and that the DoF's Corporate HR will provide input where relevant, and he is still insistent upon submitting requests to the DoF under the FOIA even though he is aware of the limited resources available.
 31. After having considered all the circumstances of this case, the Commissioner has concluded that the frequent and repetitive nature of the complainant's correspondence with the DoF regarding the same topic has imposed an unreasonable burden upon the DoF's resources. The Commissioner has therefore concluded that the DoF is entitled to characterise the request as vexatious and was correct in its application of section 14(1) of the FOIA.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Deirdre Collins
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